

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

v.

ALVIN MCDAVID (2)

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CASE NUMBER 4:13-CR-00233

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 11, 2018, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Kevin McClendon.

Alvin McDavid was sentenced on May 22, 2015, before The Honorable Marcia A. Crone of the Eastern District of Texas after pleading guilty to the offense of Conspiracy to Commit Bank Fraud, a Class D felony. This offense carried a statutory maximum imprisonment term of 5 years imprisonment. The guideline imprisonment range, based on a total offense level of 6 and a criminal history category of IV, was 6 to 12 months. Alvin McDavid was subsequently sentenced to 12 months imprisonment followed by a 3-year term of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure; restricted from gambling until financial obligation to the Court has been paid in full; participation in a drug aftercare program as directed by the probation department; \$100 special assessment; and

restitution of \$496.15. On January 11, 2016, Alvin McDavid completed his period of imprisonment and began service of the supervision term.

On November 13, 2017, the U.S. Probation Officer executed a Petition for Warrant or Summons for Offender Under Supervision [Dkt. 967, Sealed]. The Petition asserted that Defendant violated five (5) conditions of supervision, as follows: (1) The defendant shall refrain from any unlawful use of a controlled substance; (2) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; (4) The defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer. The defendant shall pay any cost associated with treatment and testing; and (5) The defendant shall pay restitution in the amount of \$496.15, due immediately.

The Petition alleges that Defendant committed the following acts: (1) On July 7, 2017, the defendant submitted a urine sample, which tested positive for cocaine. On this same date, the defendant admitted to said use; (2) On August 11, 2017, the defendant submitted a urine sample which tested positive for cocaine. On this same date, the defendant admitted to said use; (3) The defendant has failed to submit a written report within the first five days of the month for September, October, and November 2017; (4) The defendant failed to attend his drug aftercare counseling appointment scheduled on September 1, 2017, at 10:00 a.m. According to the treatment provider, the defendant has not contacted their office to date; and (5) The defendant agreed to pay \$10 per month beginning on April 10, 2016. The defendant failed to make consistent payments for June,

July, August, September, and October 2016. He also failed to make consistent payments from January, February, March, April, May, August, September, and October 2017. As of this writing, Mr. McDavid's outstanding restitution balance is \$376.15.

Prior to the Government putting on its case, Defendant entered a plea of true to all five (5) allegations of the Petition. Having considered the Petition and the plea of true to all five (5) allegations, the Court finds that Defendant did violate his conditions of supervised release.

Defendant waived his right to allocute before the District Judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, the Court recommends the Defendant's supervised release be revoked and that he be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twelve (12) months, followed by twenty-four (24) months of supervised release.

The Court also recommends that Defendant be housed in a Bureau of Prisons facility in the North Texas area, if appropriate.

SIGNED this 16th day of October, 2018.

A handwritten signature in black ink, appearing to read 'C. Nowak', written over a horizontal line.

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE